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APR 29 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

In re Application of

SAMPLE BROADCASTING CO., L.P.

For Construction Permit
for a New FM Station in
Eldon, Iowa

To: Chief, Mass Media Bureau

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File No. BPH-911010MA

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FM EXAMINERS

OPPOSITION TO PETITION TO DENY

Sample Broadcasting Co., L. P. ("SBC"), by its attorney, respectfully opposes the Petition to Deny its above-captioned application, filed by Rivertown Communications Company, Inc. ("RCC") on April 14, 1992. In support thereof, the following is shown.

RCC's petition is procedurally improper and does not lie. It is in effect a petition to specify issues and thus may not be filed with the Mass Media Bureau as a petition to deny. See, Report and Order in re Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 1 of the Commission's Rules, 72 FCC 2d 202 (1979). Therein, the Commission directed the deletion of all issue pleadings in pending cases involving mutually exclusive applications. Accordingly, RCC's petition must be dismissed without further consideration.

In addition, RCC's petition does not meet the specificity required for Petitions to Deny. As a threshold matter, a RCC must submit "specific allegations of fact sufficient to show ... that a grant of

the application would be prima facie inconsistent with the public

its application to delay Commission action on RCC's application; that there are undisclosed parties in interest in SBC's application; that Bruce Linder was involved in the planning or development of SBC's application; that SBC has is planning to duplicate the programming of station KKSI(FM) Eddyville, Iowa; and, that SBC misrepresented and concealed facts material to its application.

Attached hereto are statements under penalty of perjury of Carmela Sample, SBC's general partner, Bruce Linder, SBC's limited partner, and Mark McVey. The statements refute each of RCC's allegations and show clearly and unequivocally that SBC is a legitimate applicant and that its representations to the Commission have been completely truthful.

Mark McVey's statement confirms David Brown's concession that Mr. McVey has no information from Carmela Sample or Bruce Linder about the business structure of SBC or of any decisions made for SBC's application or proposed new station. Mr. McVey states further that he has little or no memory of making statements regarding an LMA between station KKSI. From the his recollection of the overall context of the various conversations, he believes that if made at all, such statements were "speculative" and "hypothetical" and were not based on any statements of SBC's principals or other information known to him. Ms. Sample states that she never discussed any programming or other final plans for the new station with Mr. McVey. Mr. Linder declares that statements attributed to Mr. McVey by RCC do not describe the true situation. Mr. Linder has made no statements regarding the programming for the new station; he would refer such questions to Ms. Sample should

they be asked of him. He is completely passive. There are absolutely no plans or intentions of tying SBC's proposed station with KKSI in any manner.

As to the allegation that Ms. Sample will not manage and control the new Eldon station, RCC has failed to show anything but an unfounded off-hand comment from Mr. McVey. McVey admits freely that he has never discussed the business structure of SBC with Ms. Sample or Mr. Linder, has not reviewed any documents which describe the arrangement, and does not know anything about the business relationship between Carmela Sample and Bruce Linder or any plans for operating the station. There was no basis for Mr. McVey's claim and, therefore, no basis for RCC's allegation.

RCC argues that SBC filed its application for the sole purpose of delaying action on the RCC's application. There is no basis for such an allegation. As indicated by Ms. Sample, SBC filed its construction permit application in order to acquire a broadcast station, and for no other reason. All agreements have been reported in SBC's application. Ms. Sample views the SBC application as an opportunity to manage and own an interest in a radio station; something she has considered for a number of years. SBC is a serious applicant and there are no illicit or surreptitious motives for filing and prosecuting its application.

Ms. Sample affirms that, as the general partner, she is the sole active principal of SBC. She prepared and filed the application on behalf of SBC and will be in sole overall control of the new station. Mr. Linder has not taken any part in the preparation of the SBC

application apart from agreeing to provide the necessary financing. As the active general partner, Ms. Sample has every confidence Mr. Linder will honor his commitment to be a passive investor who will not interfere with her control or management of the application or the new station.

Mr. Linder states that he never discussed any plans for the Eldon station with Mr. McVey. Furthermore, Mr. Linder is completely comfortable with Ms. Sample's ability to manage the partnership, including prosecuting the application and operating the station. He will abide by the terms of the partnership agreement, which require him to be entirely passive. Mr. Linder states that his interest in O-Town Communications, Inc., licensee of station KKSI, is separate and distinct from his interest in SBC. In O-Town Communications, Inc., he is a voting shareholder, officer and director with a voice in the management and operation of the station. In contrast, he fully understands and accepts that he is a passive investor in the Eldon venture with no voice in station management or operation.

Clearly, RCC's Petition to Deny is meritless. It is constructed of unfounded inference and speculation and does not meet the requisite prima facie showing needed for any of its requested issues. RCC's supporting affidavits are based on improper hearsay. It has failed to show that SBC filed its application for any improper purpose; that anyone other than Carmela Sample has controlled or is in a position to control SBC's application or the proposed station; that Bruce Linder has had any involvement in the planning or development of the SBC

application; that there is any basis for a programming duplication issue; or, that SBC misrepresented anything in its application.

Accordingly, RCC's Petition to Deny must be rejected.

Respectfully submitted,

SAMPLE BROADCASTING CO. L.P.

By 

John S. Neely
Its Attorney

April 29, 1992

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

STATEMENT

I am Mark McVey. I have read the Petition to Deny the application of Sample Broadcasting Co., L.P., filed by Rivertown Communications Co., Inc., in which certain statements are attributed to me. I wish to respond.

Initially, I want to make it clear that I have no personal knowledge of the arrangement between Carmela Sample and Bruce Linder with regard to their Eldon, Iowa application. I have not spoken to either of them about their agreement, any understandings they may have, or any plans either of them may have made. Ms. Sample has asked me questions from time to time about equipment and methods of operating stations, such as satellite feeds, tape automation, and live announcing, and I have responded, but I do not know what, if any, decisions she may have made. I have no knowledge of any programming plans for the Eldon station. I have never heard either Ms. Sample or Mr. Linder say that the Eldon station would simulcast any part of KKSI's programming. I have not seen anything in writing regarding such an occurrence.

I have had little to do with the Eldon venture. Ms. Sample did ask me to assist in identifying the general geographical area where the proposed tower could be located. After she located the land area, I assisted her in determining if the land was of a suitable terrain and dimension for the antenna tower she proposes to erect. I have not had any other involvement with the Eldon application.

In the Petition to Deny, David Brown attributes to me a number of statements regarding Sample's Eldon application. He describes a

conversation in June 1991. I have no recollection of the details of that conversation, but I would not have asked him to consider rebroadcasting KKSI-FM. I believe we were discussing the different ways stations operate, and that start-up operations can be very expensive. I may have mentioned that local marketing agreements, commonly known as LMA's, were becoming popular, and might present a way of keeping losses down. If I mentioned any sort of connection between KKSI and a future Eldon station it would have been merely as a hypothetical application of our general discussion and a possible opportunity for O-Town Communications, if or when the Eldon station was applied for and built. As I recall, the FCC had not yet allotted any Channel to Eldon in June 1991.

Mr. Brown next refers to a January 18, 1992, conversation between us at KKMI-FM Burlington, Iowa. As I recall, I was working on that station's transmitter at about 3 A.M. He was there, and we did speak. I do not have a clear recollection of what was said. I do not recall saying that the Sample application had been filed to delay the grant of Mr. Brown's application, or to prevent him from getting the Eldon station. I would have had no basis to make such a statement, because I have no knowledge of any motive for the filing of the Sample application. No one, not Ms. Sample, not Mr. Linder, not anyone else, has ever said anything to me about the reason why the Sample application was filed. I have not seen anything in writing on that subject.

During this early morning conversation I do recall Mr. Brown stating that he and Mr. Pritchard were interested in purchasing KKSI-FM from O-Town Communications. He was stating that if they were to

purchase the station, they would make definite changes in station management and would streamline the station's operation. To my recollection, he indicated that an IMA with his Eldon station would be one way to cut costs. He asked me whether Sample Broadcasting would have an IMA agreement with KKSI. I believe that I responded to the effect that I was not aware of Ms. Sample's exact plans for the station and that he should talk directly to her for that information.

Mr. Brown also reports that I expressed my opinion that Bruce Linder will be controlling Ms. Sample and her station. Again, I cannot remember making any such statement, but even if I did, it would have been strictly an off-hand remark with no basis on any fact of which I am aware. As I said earlier, I have no knowledge of any of the arrangements between Ms. Sample and Mr. Linder, and have no way of knowing what type of owner Mr. Linder will be, passive or active. Mr. Linder has never mentioned any plans for the Eldon station to me, and I have seen no documents regarding any plans. Mr. Brown must have misinterpreted my statements, perhaps due to the late hour.

Whenever I spoke with Ms. Sample about her application, she has been very enthusiastic about the opportunity it presents for her to get into station ownership. She has always come across as a serious applicant.

Mr. Brown mentions a dinner meeting between the two of us on March 17, 1992. He does not mention that he suggested, and about insisted on, this meeting. Mr. Brown asked me if I would like to sell my interest in KKSI and merge with him and Ms. Sample as an applicant for Eldon. He also stated or implied that he was no longer working for

station KKMI and left me with the impression that he had a falling out with his employer, Mr. Pritchard, the owner of station KKMI. Of course, I could not speak for Ms. Sample. I insisted that he should speak directly with her. I arranged a meeting between them that same evening.

At no time did I say that Ms. Sample plans to simulcast KKSI-FM. I would not have said that, because I do not know Sample's plans for the station. At most I might have said that it was possible she might simulcast KKSI, but even if I did, I was speaking strictly for myself, and merely speculating as to a theoretical possibility.

Similarly, I do not recall saying that Ms. Sample would not be permitted to manage the Eldon station. I have no knowledge of any plans by Ms. Sample, Mr. Linder, or anyone else in that regard. Nothing I might have said about the Eldon station was based on my own knowledge, or anything anyone else might have said to me. I may have guessed out loud about future possibilities, but anything I might have said was strictly my own guess.

As to my recent conversation with Mr. Collins, I called him to see if he was interested in returning to work at KKSI. I may have asked him if Mr. Brown was out of work, and I might have stated that I would ask the Linders if they were interested in hiring Brown, but I also indicated that I doubted that was much of a possibility. I am doubly positive that I did not suggest or guarantee that the Linders would give David Brown a job. The Linders have told me that they are not interested in hiring Mr. Brown for any station. I may have spoken about IMAs during the conversation and I may have brought up that

Sample might simulcast KKSI. If I did, however, I was speaking strictly about a possible opportunity for station KKSI. I have no information that any LMA is planned for the Eldon station.

After reading the petition, I can only assume that whatever statements I may have made regarding the Eldon station were misunderstood or misinterpreted. As they appear in the Petition to Deny, they do not represent the truth.

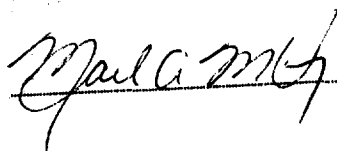
Rivertown has additionally gone back to the history of the Eddyville application to try to show some relationship between it and the Eldon application. Rivertown omits significant facts in its tale, facts which show that the involvement of the Linders in station KKSI is completely legitimate.

When I filed the application for Eddyville, the Linders were not involved. I was relying upon a distant relative for financing. By the time that I needed the financing, my relative had died, and his heir did not want to fulfill his commitment. I was left without financing at that point, and had to locate a substitute source. It was only then that the Linders came into the picture. Rivertown's insinuation that the preparation and filing of the Eddyville construction permit application was in any way related to the Linders is completely wrong and I resent any indication otherwise.

I certify under penalty of perjury that the above statement is true and correct.

Date:

4/28/92



STATEMENT

I am Carmela Sample, the general partner of Sample Broadcasting Co., L.P., an applicant for a new FM radio station at Eldon, Iowa. I have read the Petition to Deny filed by Rivertown Communications Co., Inc. in which certain allegations are made about my success in filing

have never said anything which would lead him or anyone to believe that Mr. Linder would be in control of the application or the radio station.

Mr. Linder has completely kept within the bounds of our partnership agreement. He has never tried to direct or control me or the application. He has told me that our partnership agreement will last for as long as we own the station. I am confident that he will permit me to exercise full managerial control over the station. I have known Mr. Linder since late 1990, and I have developed a respect for him and know him to be trustworthy and honest. He and I agreed that he will be a passive investor only. I have no basis to believe that he will dishonor that commitment. I have sole decision making authority and control over the application and will have the same over the new station. I would not have gone into this project without that confidence. His status as a part owner of station KKSI(FM) will have no bearing on the Eldon station.

I emphatically state that Mr. Linder had no part in preparing the application and has done nothing more than provide me with the necessary financing for this venture. Mr. Linder has not made, and has no authority to make, any decision with regard to the application or the new station. There has been no discussion about changing his role.

I personally have been in complete control of the application. I prepared the budget and completed the application form, with the assistance of my counsel and engineer, established the public file and took care of local publication of the filing notice. After I obtained topographic maps of the area surrounding Eldon, I asked Mark McVey to identify the geographic window where I could locate my transmitter and

antenna tower. With that information I personally spoke with landowners about land availability for a potential transmitter site. I then asked Mark McVey to view potential tower sites and give me his opinion as to which one was best suited for the tower I was considering. I obtained a site assurance letter from the landowner of the site I ultimately selected. When the land was later sold I met with the new owners and obtained continued assurance that I would be able to use the land for my transmitter site.

I also asked Mr. McVey's opinion about equipment and costs involved in various aspects of station operation. His responses were among the several sources I used to prepare my proposed budget. The partnership paid Mr. McVey for his consulting services. I never discussed my ultimate decisions for constructing or operating the station with Mr. McVey. Furthermore, I did not consider nor contemplate an IMA with station KKSI or any other radio station when I prepared and filed my application.

Rivertown's Petition to Deny fails to mention that I met with David Brown on March 17, 1992. No mention was made during that meeting of any IMA agreement between station KKSI(FM) and the station I am planning for Eldon. I do recall, however, that Mr. Brown proposed that he and I should join to form an applicant for the new radio station. In response, I declined the offer and indicated that I had worked very hard to prepare and file my construction permit application, have

in my Eldon application were correct when they were made and remain correct today. There are no agreements or understandings other than those represented in the application.

In summary, Rivertown's accusations are completely wrong.

I certify under penalty of perjury that the above statement is true and correct.

April 27, 1992

C. Campbell

STATEMENT

I am Bruce H. Linder, the sole limited partner of Sample Broadcasting Co., L.P., an applicant for a new FM radio station at Eldon, Iowa. I have reviewed the Petition to Deny filed by Rivertown Communications Co., Inc. The Petition contains allegations about the application and my involvement in the partnership. I have prepared the following response.

Sample Broadcasting Co., L.P. is a business venture between myself and Carmela Sample. It has nothing to do with Donald Linder, John Linder, Mark McVey, O-Town Communications, Station KKSI-FM or any other third party. While I do have an ownership interest in O-Town Communications, it is an entirely separate business venture from Sample Broadcasting; these businesses have nothing to do each other. As a voting shareholder of O-Town Communications, I have a voice in the operation and management of the station. As a limited partner and strictly passive investor in the Eldon application, my sole involvement is my commitment to provide financing for the applicant and the station. I am completely passive, as provided by the partnership agreement.

The comments allegedly made by Mr. McVey regarding my family members or a relationship between the KKSI and the Eldon station are not based on any fact of which I am aware and in no way reflect my intentions. For example, I have never speculated what programming the Eldon station might have. If asked, I would refer people to Carmela Sample, who alone will make that decision. I will not even venture an opinion. Furthermore, I have no interest in hiring David Brown and I

have never so indicated. I have no information that any member of my family has agreed to employ David Brown or that any such employment is contemplated.

Since the time that Carmela and I agreed to form a limited partnership she has been solely responsible for all aspects of the application and for making plans for the new station. Because of my familiarity with Carmela's abilities and competence, I have complete faith in her choices and judgment with respect to the application and future radio station.

I agreed to join Sample Broadcasting Company, L.P., as a passive investor. I have no authority, ability nor desire to make any decision concerning the application or operation of the partnership or the station. Ms. Sample informs me periodically about the progress of the application, however, she has never asked me to make a decision for her or to ratify any decision which she has made concerning the application or the proposed station. I have exerted absolutely no influence over Ms. Sample's decisions concerning the Eldon station or the partnership, and I will not do so in the future.

I certify under penalty of perjury that the above statement is true and correct.

Date: 4-27, 1992

Bruce H. Smith

CERTIFICATE OF SERVICE

I hereby certify that on this 29 day of April, 1992
a copy of the foregoing document was placed in the United States mail.